**St. Elizabeth Community Hospital *and* Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO.** Case 20-CA-13574

January 20, 1982

## SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 15, 1981, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding.[1] Thereafter, Respondent and the Charging Party filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommendation.[2]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts the recommendation of the Administrative Law Judge and hereby orders that the original Order in *St. Elizabeth Community Hospital*, 237 NLRB 849 (1978), be, and it hereby is, reaffirmed.

[1] The Board's original Decision and Order in this proceeding is reported at 237 NLRB 849 (1978).

[2] In adopting the underlying Decision, we note a recent court opinion in accord with the result reached herein. *N.L.R.B.* v. *St. Louis Christian Home*, 663 F.2d 60 (8th Cir. 1981), enfg. 251 NLRB 1477 (1980).

## DECISION ON REMAND

### STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: On August 24, 1978, the National Labor Relations Board issued its original Decision and Order in this proceeding granting the General Counsel's Motion for Summary Judgment.[1] The Board found that Respondent St. Elizabeth Community Hospital had committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, herein the Act, by refusing to bargain with the Charging Party, Hospital and Institutional Workers Union, Local 250, SEIU, AFL-CIO. Thereafter, Respondent petitioned the United States Circuit Court of Appeals for the Ninth Circuit for review of the Board's Order and the Board's cross-petition for enforcement.

[1] 237 NLRB 849 (1978).

The court of appeals, in its *per curiam* opinion issued August 21, 1980, Judge Sneed dissenting,[2] remanded the case to the Board for consideration of Respondent's first amendment challenge to the Board's assertion of jurisdiction in light of the Supreme Court's decision in *N.L.R.B.* v. *Catholic Bishop of Chicago*.[3]

Accordingly, the remand was heard before me on May 14, 1981, in San Francisco, California. Upon a review of the entire record, the proceedings, and briefs filed by the General Counsel and Respondent, I make the following:

### I. BACKGROUND

The facts relating to the nature of Respondent's business are not in dispute. Respondent is a California nonprofit corporation, licensed as an acute care hospital, servicing the community of Red Bluff, California. The corporation is owned and operated by the Omaha (Nebraska) Provinciate of the Sisters of Mercy, a pontifical order of the Roman Catholic Church.[4] The Omaha Provinciate operated 14 health care facilities in the western portion of the United States. Nationally, the order operates, through other provinciates and mother houses independent of the provinciates, some 100 hospitals. Respondent's California corporate charter sets forth two purposes of the corporation. Its specific and primary purpose is to "own, operate and manage a charitable hospital . . . ." Its other general purpose is to operate the hospital "in compliance with the objectives and philosophy" of the Sisters of Mercy. Furthermore, the charter sets forth some limitations on the nature of the medical services to be performed. It prohibits "any direct abortion or any other medical or surgical services or procedures in conflict with the officially adopted policies of . . . the moral teachings of the Roman Catholic Church." It concludes, stating that the hospital will endeavor to provide medical assistance to "all persons regardless of race, color or religious affiliation."

The corporate charter also provides that Respondent's board of directors be composed of 50 percent Sisters of Mercy or mercypersons.[5] All of the directors are selected and approved by the Omaha Provinciate. They usually come from the local community. They are not required to be Roman Catholics but must follow the corporate charter and enforce the philosophy of the hospital. The title to the real property on which the hospital is located rests with Respondent Corporation.

The hospital currently employs approximately 250 employees. Four of these individuals are members of the order. One of these is Director Barry's assistant; the other three are associated with the pastoral care department. The purpose of that department is to provide spiritual assistance to patients and staff as needed. This includes a continual effort on their part to keep the spirit

[2] 626 F.2d 123.

[3] 440 U.S. 490 (1979).

[4] Unlike other orders of the Catholic Church, a pontifical order reports directly to the Pope, not indirectly through an Archdiocese.

[5] A mercyperson is an individual who is not a member of the order, but who has embraced the philosophy of the Sisters. R. Michael Barry, the hospital's administrator is a mercyperson and he, together with the four members of the order who are assigned to Respondent, sit on its board of directors.

of Christian brotherhood alive as it relates to providing patient care.

As in all Catholic hospitals, Bibles, crucifixes, and other religious symbols can be found throughout. The hospital has a chapel which is used by Catholic priests for religious services such as communion. Clergymen of the other faiths use it as well. When not in use, it is open to patients.

All hospital meetings open with a prayer and a prayer is said twice daily over the hospital's public address system. Hospital employees are not required to participate in these ceremonies, although some do. Furthermore, the pastoral care department may ask the assistance of an employee to ready the chapel for a religious service. That duty is, however, not mandatory and may be refused. In that circumstance, naturally, the department relies on employees who are willing to perform that task. An employee may, however, be required to awaken, dress, and otherwise prepare a patient for a religious service.

Respondent observes religious holidays in the sense that they are celeberated; in addition, Respondent's employees receive seven paid holidays per year: all are Federal holidays, including Christmas.

Consistent with the teachings of the Catholic Church, and with its corporate charter, Respondent declines to provide birth control services and assistance and will not perform abortions in circumstances where the procedure is not medically indicated. In addition, of course, it will not engage in the practice of euthanasia, which in any event is prohibited by state laws governing homicide.

Respondent, like all hospitals in the State, is regulated by the State Department of Health and is annually licensed by it. If it, or any other hospital, wishes to increase the number of beds by constructing a hospital addition or wishes to provide new equipment involving substantial cost, it must demonstrate the community's need to a local board and then obtain the approval of the Department of Health. It is exempt from Federal income taxation. It does not receive any public grants, although some patients pay their fees through Federal, state, or county medical assistance programs.

In conclusion, it is fair to say that Respondent, as operated by the Sisters of Mercy, is a health care institution which attempts to combine medical science with that teaching of Christ encouraging the healing of the sick. As the General Counsel concedes, the Sisters of Mercy "try to inculcate into each employee the idea that service to the patients is service to the Lord." Both employees and patients are given statements of Respondent's philosophy to that effect. Thus, while Respondent's employees are not required to be Roman Catholics and are not required to participate in religious activities, nonetheless they are held to a standard of conduct which is measured by the Sisters' perception of "Christian morality." This concept appears to be somewhat fluid in application for as Sister Mary Kieran Harney, a director, said, the hospital would frown on an employee espousing philosophies contrary to those of the church while at work, implying that for the most part such conduct would be ignored if it occurred outside the hospital. Nevertheless, it appears that the hospital could become concerned about the lifestyles of epmployees when they are not at work. She cited an occasion where a managerial employee at another hospital was asked to resign because he engaged in wife swapping, conduct not meeting the Christian morality standard.

With regard to Respondent's ability to engage in collective bargaining, Administrator Barry testified that he could see a potential for conflict if the hospital negotiated an agreement containing a "just cause" clause governing the discharge of employees. He suggested that Church doctrine and the just cause concept would become antagonistic in the event an employee was discovered performing prohibited tasks such as providing birth control devices or performing abortions. In examining this hypothetically, while I do not wish to predict the future, it appears to me that his concern is factually unwarranted. An employer may, of course, choose not to engage in a certain type of business, as Respondent has here. It deliberately chooses not to engage in birth control assistance or abortions. The fact that its refusal is based on religious grounds appears to me to be of no significance, for a hospital may also choose not to perform other types of medical services, whether for religious reasons or simply because it deems them to be good business. In the event that an employee engaged in prohibited business, it seems unlikely that an arbitrator would find his subsequent discipline not to be for just cause. In any event, the probability of such an incident is very low indeed, particularly as there are other hospitals in the community which provide the services in question.

### II. THE SCOPE OF THE COURT'S REMAND ORDER

This case was originally decided by the Board in summary judgment proceedings; accordingly, no testimony or documentary evidence was then adduced. Respondent had raised its first amendment challenge to the Board's jurisdiction during postelection procedures. The Board rejected it as not timely, but the court, in denying enforcement of the 8(a)(5) order which followed, held it was. The court's remand requires the Board to consider this case "in light" of *N.L.R.B.* v. *Catholic Bishop of Chicago, supra*. It did not specifically discuss the applicability of the 1974 health care amendments to the Act, particularly Section 2(2) and (14).

When the Congress was considering that particular amendment, it was aware that religious institutions operated a large number of hospitals in the United States, and, in fact, considered exempting one or more religions from the amendment's coverage in order to avoid a conflict with those churches' religious doctrines.

The court did not discuss the congressional intent with respect to Section 2(2) and (14), although it may have done so by implication as its order requires the Board to deal with the constitutionality of the Act insofar as it is applied to this Respondent. *Catholic Bishop*, of course, was not decided by the Supreme Court until 1979 some 5 years after the passage of the health care amendments. Moreover, *Catholic Bishop* dealt with educational institutions rather than hospitals and nursing homes. The Court held that since the Act did not specifically authorize

coverage of parochial schools, the Board's exercise of jurisdiction over them was erroneous.

Because of the differing natures of the two types of institutions, it appears appropriate to deal with the applicability of the 1974 amendments before addressing any constitutional question. Such analysis is clearly consistent with the Court's order to consider the matter in light of *Catholic Bishop*.

### III. THE HEALTH CARE AMENDMENT OF 1974

In *Mid American Health Services, Inc.*, 247 NLRB 752, 753 (1980), the Board set forth the history of the 1974 health care amendments and concluded they constituted a clear congressional mandate to assert jurisdiction over church-operated health care institutions, in that instance an arm of the Seventh Day Adventist Church. In that case, the Board said:

> The health care amendments, *inter alia*, removed the preexisting jurisdictional exemption accorded nonprofit hospitals by Section 2(2) of the Act.[6] Given earlier Board determinations,[7] the repeal of the exemption for nonprofit hospitals in effect brought all privately owned health care institutions within the Board's legal jurisdiction. The Seventh Day Adventist Church, throughout the amendment process, opposed repeal of the exemption, on grounds which included those constitutional claims advanced in this proceeding. Thus, the church advocated an amendment which would have maintained a jurisdictional exemption for any hospital which "opposes unionization because of historically held religious teachings or tenets."[8] No such amendment was introduced by any member of the Congress. Senator Ervin did introduce[9] a proposed proviso to the new Section 2(14) of the amendments (setting forth the definition of a "health care institution") which would have maintained a jurisdictional exemption for hospitals "owned, supported, controlled or managed by a particular religion or by a particular religious corporation or association." The Ervin amendment was rejected by the Senate.[10] This legislative history, when coupled with the enactment by Congress of other legislation specifically directed toward the problem of potential conflict between an employee's religious beliefs and collective-bargaining responsibilities,[11] removes, in our judgment, any doubt that the Congress clearly intended the Act to apply to health care institutions operated by religious institutions in general and the Seventh Day Adventist Church in particular.

[6] Prior to the health care amendments, Sec. 2(2) provided, in relevant part, that: "The term 'employer' . . . shall not include . . . any corporation or assocition operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual."

[7] See *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB (1967) (proprietary hospitals); *University Nursing Home, Inc.*, 168 NLRB 263 (1967) (proprietary nursing home and related facilities); *Drexel Home, Inc.*, 182 NLRB 1045 (1970) (nonprofit nursing homes and related facilities).

[8] See, generally, "Hearings on S. 794 S. 2292 Before the Senate Subcommittee on Labor of the Committee on Labor and Public Welfare, 93d Cong., 1st sess." 483-547 (1973) (hereinafter Senate Hearings).

[9] 120 Cong. Rec. S.6950 (daily ed., May 2, 1974).

[10] 120 Cong. Rec. S.6963-64 (daily ed., May 2, 1974).

[11] Sec. 19, added to the Act by the health care amendments, states:

> Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which had historically held conscientious objections to joining for financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious charitable fund exempt from taxation under section 501 (c)(3) of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee.

Indeed, Sec. 19 closely resembles another proposal submitted to Congress in 1973 by the Seventh Day Adventist Church itself. See Senate Hearings, *supra*, fn. 8 at 409-510. In *Catholic Bishop of Chicago, supra*, the Supreme Court characterized Sec. 19 as "reflecting congressional sensitivity to First Amendment guarantees."

In *Catholic Bishop*, the Supreme Court held that the Board did not have jurisdiction over the parochial schools in question because there was no showing of a specific congressional intent to mandate their coverage under the Act. Here, as the Board has held, such an intent is present. Reviewing the congressional record relating to the 1974 health care amendments, see the General Counsel's Exhibit 2, it is quite clear that Congress had the opportunity to specifically exclude religiously operated hospitals from the Act's coverage, but declined to do so. Therefore, the conclusion is inescapable that Congress intended those hospitals to be covered by the 1974 amendments. To that extent, therefore, *Catholic Bishop of Chicago* is distinguishable.

### IV. THE CONSTITUTIONAL ISSUE

Under normal circumstances, there is a philosophical question regarding whether or not an administrative agency, such as the Board, should attempt to detemine the constitutionality of its own act. Indeed, the Board in *Mid American Health Services, Inc. supra*, stated that it would follow the congressional mandate and leave to the courts the "final determination concerning the constitutionality of that mandate . . . ." This, however, is not the normal case. The court of appeals has specifically directed the Board to determine whether or not the assertion of jurisdiction over Respondent is constitutional.

While Respondent acknowledges there is no doctrine of the Roman Catholic Church which, *per se*, condemns unionization of its employees or precludes bargaining with a union which is the exclusive representative of its employees,[6] it nonetheless asserts that the Board's asser-

[6] Indeed, the Church officially encourages labor unions as a responsible means of implementing social justice in the workplace. Whether that encouragement is directed at itself as an employer is unclear. See "The Condition of Labor," Encyclical of Pope Leo XIII (1891), reprinted in "Four Great Encyclicals: Labor, Education, Marriage, the Socialist Order," Paulist Press, New York, New York (undated).

tion of jurisdiction would foster excessive entanglement between the Church and the State in the person of the Board. It reaches this conclusion by asserting that the religious environment of the hospital necessarily leads to a substantial potential for government entanglement with the affairs of the Church. The General Counsel disagrees, based on the evidence which he contends "fails to establish that the assertion of jurisdiction . . . would impair the ability of Respondent or the Sisters of Mercy to practice their religion or that the assertion of jurisdiction would infringe on their constitutional rights under the establishment clause or the free exercise clause of the First Amendment."

In *Lemon* v. *Kurtzman*, 403 U.S. 602 at 612–613 (1971), the Supreme Court established a three-pong test to determine the constitutionality of church-government relationships: First, the statute must have a secular legislative purpose. Second, the law's principal primary effect must be one that neither advances nor inhibits religion. Finally, the statute must not foster "an excessive entanglement with religion."

The first two tests are not at issue here. The legislative purpose of the Act, as amended, is a secular one: promotion of industrial peace in the health care industry. Further, the primary purpose of the law is to grant certain industrial rights to employees and employers; thus, it in no way advances or inhibits religion. The question, therefore, is whether the Act's assertion of jurisdiction will foster excessive entanglement between Church and State.

The Supreme Court has held that total separation of Church and State is not possible in an absolute sense.[7] To determine the extent of the entanglement, it said, there must be an examination of the character and purpose of the church-related institution affected, the nature of the intrusion, and the resulting relationship between the government and the religious authority.[8] In *Lemon*, the Court observed that "parochial schools involve substantial religious activity and purpose." The Court also noted that the teachers had been directed to follow a specific policy of proselytizing. It quoted a school handbook for teachers which said, "Religious formation is not confined to formal courses; nor is it restricted to a single subject area" and concluded that teachers were to stimulate interest in religious vocations and missionary work. Finally, the Court said that church "[d]octrines and faith are not inculcated or advanced by neutrals. With the best of intentions such a teacher would find it hard to make a total separation between secular teaching and religious doctrine."[9] The hospital here has given no similar instructions to its employees. The Court further observed in *Lemon* that the state activities there in question required the state annually to oversee the salary supplements and textbook purchasing programs under scrutiny. This ongoing relationship created an impermissible excessive governmental entanglement in the affairs of the church-operated schools.

In *Catholic Bishop of Chicago, supra*, as in *Lemon*, the Court was again concerned with religion and the State, this time in the context of regulation of employee representation through the Board. But it must be remembered that *Catholic Bishop*, dealt with parochial school systems, having an educational purpose through which religious doctrine can easily be taught, rather than as here, a hospital whose primary purpose is medical care and whose religious purpose is more neutral than that of a parochial school. But the Court did not decide *Catholic Bishop* on "excessive entanglement" grounds. Indeed it did not decide any constitutional issue. Instead it held that, as noted, the Congress had never specifically intended, in passing the National Labor Relations Act, for the Board to assert jurisdiction over parochial schools, a holding of statutory construction. However, the case has been read to be broader than that and it appears from its decisional language, that the court of appeals, in this remand, is concerned with the constitutional tension which Respondent sees between the Act and the first amendment, not statutory construction.

To put this alleged tension in perspective, I believe it is wise to recall first the constitutional underpinning of the National Labor Relations Act, as well as to note some subsequent constitutional developments. In its original decision holding the Act constitutional the Supreme Court said:

> in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.
>
> *That is a fundamental right.* Employees have as clear a right to organize and select their representatives for lawful purpose as the Respondent has to organize its business and select its own officers and agents. [Emphasis supplied.][10]

Subsequent to that decision the Supreme Court and various circuit courts of appeal further clarified the declaration of the fundmental right of employees to organize, finding it implicit in the first amendment's free assembly language. *Thomas* v. *Collins*, 323 U.S. 516 at 432 (1944); *Shelton* v. *Tucker*, 364 U.S. 479 at 485–487 (1960); *McLaughlin* v. *Tilendis*, 398 F.2d 287 (7th Cir. 1968); *American Federation of State, County and Municipal Employees* v. *Woodward*, 406 F.2d 137 (8th Cir. 1969). These cases do no more than hold that the right of employees to self-organization is constitutionally protected. They do not go on to say that the right to organize includes other rights such as mandating employer recognition, collective bargaining, or striking. Those rights are legislatively granted through regulatory enactments such as the Act. Thus the Act has a clear constitutional foundation, even if that foundation is limited in scope. It cannot be said, therefore, that the Act is simply an exercise of the general legislative power. It is more than that. Consequently

[7] *Roemer* v. *Board of Public Works of Maryland*, 426 U.S. 736 at 746 (1976).

[8] *Lemon* v. *Kurtzman, supra* at 615.

[9] *Id.* at 616–619.

[10] *N.L.R.B.* v. *Jones & Laughlin Steel Corporation*, 301 U.S. 1 at 33 (1937).

when the Act and a constitutional right such as freedom of religion become opposed, great care should be taken to protect both interests.

Undoubtedly, the test set forth in the Court's decision in *Serbet* v. *Verner*, 374 U.S. 398 at 403 (1963), will be helpful in avoiding unnecessary infringement of either right.[11] There the Court held that constitutional rights may suffer an "incidental burden" if a "compelling state interest" in regulating other subjects can be shown. It has long been held that certain conduct, though impelled by religious beliefs, may be regulated or even prohibited because of such a compelling interest. *Reynolds* v. *United States*, 98 U.S. 145 (1878); *Cantwell* v. *Connecticut*, 310 U.S. 296 at 303-304 (1940); *Braunfeld* v. *Brown*, 366 U.S. 599 at 603-604 (1960); *Cap Santa Vue, Inc.* v. *N.L.R.B.*, 424 F.2d 883 (D.C. Cir. 1970).

The issue then is whether or not the Act is a legislatve expression of a "compelling state interest." On the basis of the congressional debate over the 1974 health care amendments, as well as awareness of our national history of labor strife leading first to the passage of the Wagner Act, followed by subsequent amendments, one must conclude that that it is. Cf. *Jones & Laughlin Steel Corp., supra*. Having reached that conclusion, all that needs be done is to determine if the Board's regulation of that interest will involve it is "excessive" or only "incidental" entanglement in religion as described in *Lemon* v. *Kurtzman, supra.*

Based on the facts adduced at the hearing, I find that the risk of entanglement is slight and at worst can only be incidental. That conclusion, it seems to me, is consistent with the District of Columbia Circuit's decision in *Cap Santa Vue, Inc.* v. *N.L.R.B., supra*, which presented a conflict even greater than that suggested here. There, the owners of two nursing homes were practicing members of the Seventh Day Adventist Church which, unlike the Roman Catholic Church, actually has a doctrine which in effect prohibits its members from joining or bargaining with labor unions. The Court held, nonetheless, that the nursing homes were obligated to recognize and bargain with the labor union which the Board had certified as the majority representative of their employees. It held that the certification in no way impeded the right of the Seventh Day Adventist owners to hold to their beliefs and ordered them to comply with the Act's secular purpose. The court in *Cap Santa Vue* foresaw no significant intrusion on the owner's religious beliefs. The intrusion was, therefore, only incidental.

The only factor distinguishing that case from this is that the nursing homes there did not make the "excessive entanglement" argument which the hospital is making here. Even so, the only entanglements envisioned by the hospital are the following:

> 1. It is conceivable the Hospital might discharge an employee for failing to meet "Christian morality" standards but the Bord might deem those standards a pretext if changes were brought under Section 8(a)(1) or (3) of the Act.
>
> 2. Assuming the Hospital negotiated a collective bargaining contract with the Union containing a requirement that employees be discharged only for "good cause," it is conceivable that an employee could be discharged for participating in birth control and/or abortion procedures using hospital premises. Since those procedures are prohibited by the Church, the Hospital surmises that an arbitrator might require it to reinstate such an individual.

With regard to the latter circumstances, as I have earlier alluded in the factual section of this Decision, it is highly unlikely that an arbitrator would reach such a decision, particularly in view of the corporate charter's specific prohibition. Moreover, the hospital's concern is only speculation. It may well negotiate a collective-bargaining contract covering such misconduct and it is certainly premature to assume that the Union would disregard such policies. With regard to the first concern, again, the matter seems entirely speculative and an unlikely scenario. Certainly it would not involve ongoing scrutiny by the Board which can act only when charges are filed. Even then the Board would have to respect the argument. If it did not, review of alleged Board abuse is available in the courts of appeal. Even if that constituted "entanglement," it would not be "excessive." Accordingly, I conclude that in the circumstances of this case the Board's exercise of jurisdiction is appropriate.

To reiterate, even though the hospital is church-related, its primary purpose is the delivery of medical care. There is little, if any, sectarian mission outwardly manifested in the hospital's purpose; indeed, the sectarian mission of the teaching of Christ regarding healing is carried out by example, not deliberate education. Therefore, I conclude that the right of employees to select and be represented by collective-bargaining agent will not interfere with the free exercise of religion or tend to establish a religion. Most importantly it will not result in excessive governmental entanglement in the Catholic religion, for there will be no intimate, continuing relationship between the Board and Respondent.[12]

## Conclusions of Law

1. Respondent St. Elizabeth Community Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) and a health care institution within the meaning of Section 2(14) of the Act.

2. Hospital and Institutional Workers Local Union No. 250, SEIU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The assertion of jurisdiction by the Board over Respondent will not cause the Board to become excessively entangled in the affairs of Respondent insofar as it is a religious institution and therefore will not infringe upon the free exercise of the religious beliefs of its owners.

## RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, pursuant to the remand orders of the United States Court of Appeals for the Ninth Circuit and the Board, I

[11] Similarly, see *NAACP* v. Button, 371 U.S. 415 at 448 (1963).

[12] This can be contrasted to the state health department's close regulation of the hospital, regulation to which it does not object.

recommend that the Board reaffirm the remedial order it issued in *St. Elizabeth Community Hospital*, 237 NLRB 849 (1978).